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8

9
10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ARIZONA

12 PETER G. THOMAS, a single man,,
13

14 Plaintiff,

15 v.

16 METROPOLITAN LIFE INSURANCE
COMPANY, a New York corporation,

17 Defendant.
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28

No

**EXHIBITS TO NOTICE OF
REMOVAL**

EXHIBIT 1

MICHAEL K. JEANES
Clerk of the Superior Court
By kim whitson, Deputy
Date 03/14/2013 Time 16:17:14

Description	Amount
CASE# CV2013-002514	
CIVIL NEW COMPLAINT	301.00

TOTAL AMOUNT	301.00
Receipt# 22832997	

Chris R. Baniszewski, State Bar No. 015617
**WARNER ANGLE HALLAM
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2555 East Camelback Road, Suite 800
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Attorneys for Plaintiff Peter G. Thomas

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETER G. THOMAS, a single man,
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a New York corporation,
Defendant.

No. **CV2013-002514**
COMPLAINT

(Breach of Contract, Insurance Bad
Faith, Punitive Damages)

For his Complaint against Defendant, Metropolitan Life Insurance Company ("MetLife"), Plaintiff, Peter G. Thomas, alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Mr. Thomas is, and was at all times relevant hereto, a resident of Maricopa County, Arizona.
2. Upon information and belief, Defendant is a New York corporation.
3. The events that give rise to this Complaint occurred in Maricopa County, Arizona.
4. This Court has jurisdiction over this dispute by virtue of A.R.S. § 12-123.
5. Venue is proper in Maricopa County, Arizona.

GENERAL ALLEGATIONS

6. Mr. Thomas began working at Vestar Development Co. ("Vestar") in October of 1989. He was Vestar's Chief Financial Officer.

1 7. Effective November 1, 1999, Vestar obtained Group Policy No. 5542639-G
2 (the "Policy") from Defendant which provided long term disability insurance coverage
3 for Vestar's employees.

4 8. At all times during his employment with Vestar, Mr. Thomas met the
5 eligibility requirements of the Policy.

6 9. In June of 2011, Mr. Thomas began missing work at Vestar due to bipolar
7 disorder.

8 10. Mr. Thomas continued to work intermittently with Vestar from June 21,
9 2011 until December 6, 2011. During this time, Mr. Thomas was undergoing treatment
10 for bipolar disorder, but he continued to receive his full salary from Vestar.

11 11. As of December 6, 2011, Vestar determined that Mr. Thomas could no
12 longer perform his occupation as Chief Financial Officer. Accordingly, Vestar
13 terminated Mr. Thomas' employment as of December 6, 2011 and ceased paying him his
14 salary at that time.

15 12. On or about January 19, 2012, Mr. Thomas made a claim for long term
16 disability benefits under the Policy.

17 13. Under the Policy, Mr. Thomas was entitled to a "Monthly Benefit" if he
18 was "Disabled" and he became "Disabled" while covered under the Plan.

19 14. "Disabled" under the Policy means that, due to sickness, the insured is
20 receiving "Appropriate Care and Treatment" from a doctor on a continuing basis and the
21 insured is unable to earn more than 80% of his "Predisability Earnings" at his "Own
22 Occupation" for any employer in the insureds "Local Economy".

23 15. Due to his bipolar disorder, Mr. Thomas became "Disabled" as defined in
24 the Policy on December 6, 2011 when his employment with Vestar was terminated. His
25 disability continues to this date.

26 16. Under the Policy, benefits begin to accrue on the date following the day the
27 insured completes the "Elimination Period," and payments start on the date one month
28 after completion of the "Elimination Period."

1 17. Under the Policy, the "Elimination Period" begins on the day the insured
2 becomes "Disabled" and ends 90 days thereafter.

3 18. Mr. Thomas' elimination period began on December 7, 2011 and was
4 completed on or about March 7, 2012.

5 19. Based upon the Elimination Period and the terms of the Policy, Mr. Thomas
6 should have begun to receive his Monthly Benefit under the Policy on or about April 7,
7 2012.

8 20. On April 10, 2012, however, Defendant issued a letter notifying Mr.
9 Thomas that he did not "qualify for LTD benefits effective September 19, 2011."

10 21. The reasons for denial of Mr. Thomas' LTD claim were stated as follows:

11 "According to the file, your date last worked was June 20, 2011 and
12 you were out of work due to Bipolar. The Plan has a 90 day
13 elimination period in which your Long Term Disability would begin
14 as of September 19, 2011. The Plan also indicates you must "Provide
15 proof of Disability within 3 months after the end of your Elimination
16 Period." This would mean that you had until December 19, 2011 to
17 submit your request for the Long Term Disability benefits. We did
18 not receive your Long Term Disability request until January 19, 2012
19 which is beyond the allowed 3 months."

20 22. Defendant's letter further stated as a reason for denial that:

21 "Furthermore, your employer indicated that your date last worked was June
22 20, 2011 however you continued to work off site. Your employer indicated
23 you were able to make decisions, review documents and emails sent to you.
24 Your employer also indicated that you continued to be on the payroll until
25 December 6, 2011 when you were terminated. You had received severance
26 from December 6, 2011 to February 29, 2012."

27 23. Defendant's letter also asserted that certain information was lacking from
28 Mr. Thomas' file.

 24. Defendant's denial letter states that the insured may request a review of the
claim in writing within 180 days after receipt of notice of denial of the claim.

1 25. On May 29, 2012, well within 180 days after Mr. Thomas received notice
2 of denial of his claim, counsel for Mr. Thomas sent a letter to Defendant appealing the
3 denial of Mr. Thomas' claim and requesting a further review of the claim.

4 26. The May 29th letter explained to Defendant that because Mr. Thomas was
5 earning his full salary until December 6, 2011, he could not be determined to be
6 "Disabled" under the Policy until that date. Accordingly, Defendant's apparent
7 conclusion that Mr. Thomas became "Disabled" on June 20, 2011 was mistaken, as was
8 its conclusion that Mr. Thomas had not requested Long Term Disability benefits beyond
9 the allowed 3 months.

10 27. The May 29th letter explained that because Mr. Thomas was not "Disabled"
11 under the Policy until December 6, 2011, he had until June 6, 2012 to request his Long
12 Term Disability benefits and that Mr. Thomas had provided Proof of Disability on
13 January 19, 2012.

14 28. The May 29th letter further states that Mr. Thomas believed that he had
15 provided all the required information, but if there was specific information Defendant
16 needed, Mr. Thomas would provide the information and documents.

17 29. Following the May 29th letter, counsel for Mr. Thomas spoke on the
18 telephone with Defendant representative, Rhonda McCovery.

19 30. Ms. McCovery indicated that Defendant needed all of Mr. Thomas'
20 medical records to review his claim even though Mr. Thomas had previously provided a
21 substantial amount of information, including doctors' records, to support his claim, which
22 was apparently ignored.

23 31. Despite the previous information that was provided, on September 7, 2012,
24 counsel for Mr. Thomas sent all of Mr. Thomas' medical records to Ms. McCovery.

25 32. Since September 7, 2012, counsel for Mr. Thomas has tried to contact Ms.
26 McCovery on several occasions by telephone, e-mail and a further letter dated November
27 29, 2012.
28

1 33. Neither Ms. McCovery nor anyone else from Defendant has contacted Mr.
 2 Thomas or his counsel regarding Mr. Thomas' claim, and Defendant has not responded to
 3 the May 29th letter requesting review of Mr. Thomas' claim.

4 34. Despite Defendants assertion in its denial letter that it would evaluate all
 5 the information provided regarding a further review of Mr. Thomas' claim and advise
 6 him of its determination in a timely manner, Defendant has not timely made a
 7 determination of Mr. Thomas' request for a review of his claim and Defendant has
 8 refused to communicate at all with Mr. Thomas or his counsel.

9 COUNT I

10 (Breach of Contract)

11 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 above as
 12 though fully set forth herein.

13 36. Mr. Thomas fully qualified for Long Term Disability benefits under the
 14 Policy as a result of him becoming "Disabled" on December 6, 2011.

15 37. Given Mr. Thomas' "Disability" he should have started receiving his
 16 "Monthly Benefit" under the Policy on or about April 7, 2012.

17 38. Defendant has not provided Mr. Thomas his Monthly Benefit and, instead,
 18 has wrongfully denied his claim.

19 39. Defendant has not timely responded to Mr. Thomas' request that it review
 20 the claim following the denial.

21 40. By wrongfully denying Mr. Thomas' claim and refusing to review the
 22 denial in a timely manner, Defendant has breached the Policy.

23 41. As a result of Defendant's breach of the Policy, Mr. Thomas has been
 24 damaged in that he has not received the benefits provided for in the Policy.

25 42. Mr. Thomas' claim arises out of contract and, therefore, Mr. Thomas is
 26 entitled to recover his costs and reasonable attorney' fees incurred herein pursuant to
 27 A.R.S. § § 12-341 and 12-341.01 or otherwise.
 28

COUNT II**(Insurance Bad Faith)**

43. Plaintiff hereby incorporates by reference paragraphs 1 through 42 above as though fully set forth herein.

44. There is an implied duty of good faith and fair dealing in every insurance policy.

45. Defendant intentionally denied Mr. Thomas' claim, failed to pay Mr. Thomas' claim and has delayed payment of Mr. Thomas' claim without a reasonable basis for such actions.

46. Defendant knew that it acted without a reasonable basis for its actions.

47. Defendant failed to perform an investigation or evaluation adequate to determine whether its actions were supported by a reasonable basis.

48. Defendant's actions have resulted in a breach of the duty of good faith and fair dealing.

49. Mr. Thomas has been damaged as a result of Defendant's breach of the duty of good faith and fair dealing in an amount to be proven at trial.

50. Mr. Thomas' claim arises out of contract and, therefore, Mr. Thomas is entitled to recover his costs and reasonable attorney' fees incurred herein pursuant to A.R.S. § § 12-341 and 12-341.01 or otherwise.

COUNT III**(Punitive Damages)**

51. Plaintiff hereby incorporates by reference paragraphs 1 through 50 above as though fully set forth herein.

52. Defendant's actions related to Mr. Thomas' claim for Long Term Disability benefits under the Policy demonstrate that Defendant acted to serve its own interests, having reason to know and consciously disregarding a substantial risk that its conduct might significantly injure the rights of Mr. Thomas.

53. Defendant's actions related to Mr. Thomas' claim for Long Term Disability benefits under the Policy entitle Mr. Thomas to an award of punitive damages.

WHEREFORE, Plaintiff requests judgment against the Defendant as follows:

A. For damages as a result of Defendant's breach of contract in an amount to be proven at trial;

B. For damages as a result of Defendant's breach of the duty of good faith and fair dealing in an amount to be proven at trial;

C. For punitive damages in an amount to be proven at trial;


D. For Plaintiff's cost and reasonable attorneys' fees incurred herein; and

E. For such other and further relief as the Court may deem appropriate.

Dated this 14th day of March, 2013.

WARNER ANGLE HALLAM
JACKSON & FORMANEK PLC

By


Chris R. Baniszewski
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attorneys for Peter G. Thomas

271566.1

STATE OF ARIZONA
DEPT. OF INSURANCE

MAR 15 2013

TIME 1:30pm
SERVICE OF PROCESS

Chris R. Baniszewski, State Bar No. 015617
WARNER ANGLE HALLAM
JACKSON & FORMANEK PLC
2555 East Camelback Rd., Suite 800
Phoenix, Arizona 85016
Telephone: (602) 264-7101
E-mail: cbaniszewski@WarnerAngle.com

Attorneys for Plaintiff Peter G. Thomas

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETER G. THOMAS, a single man,
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a New York corporation,
Defendant.

No.

CV2013-002514

SUMMONS

IF YOU WANT THE ADVICE OF A
LAWYER, YOU MAY WISH TO CONTACT
THE LAWYER REFERRAL SERVICE AT
602-257-4434 OR ON-LINE AT
WWW.LAWYERFINDERS.ORG. LRS IS
SPONSORED BY THE MARICOPA
COUNTY BAR ASSOCIATION

STATE OF ARIZONA TO DEFENDANT:

METROPOLITAN LIFE INSURANCE COMPANY

c/o Director of Insurance
2910 N. 44th St., 2nd Floor
Phoenix, Arizona 85018

YOU ARE HEREBY SUMMONED and required to appear and defend, within the time applicable, in this action in this court. If served within Arizona, you shall appear and defend within 20 days after the service of the summons and complaint upon you, exclusive of the day of service. If served out of the state of Arizona—whether by direct service, by registered or certified mail, or by publication—you shall appear and defend within 30 days after the service of the summons and complaint upon you is complete, exclusive of the day of service. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this state, the insurer shall not be required to appear, answer or plead until expiration of 40 days after date of such service upon the Director. Service by registered or certified mail out of the state of Arizona is complete 30 days after the date of filing the receipt and affidavit of service with the court. Service by publication is complete 30 days after the date of first publication. Direct service is complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete 30 days after filing the affidavit of compliance and return receipt or officer's return. Ariz. R. Civ. P. 4; Ariz. Rev. Stat.

1 §§20-222, 28-502, 28-503.

2 **YOU ARE HEREBY NOTIFIED** that, in case of your failure to appear and
3 defend within the time applicable, judgment by default may be rendered against you for
4 the relief demanded in the complaint.

5 **YOU ARE CAUTIONED** that, in order to appear and defend, you must file an
6 answer or proper response in writing with the Clerk of this Court, accompanied by the
7 necessary filing fee, within the time required, and you are required to serve a copy of any
8 answer or response upon Plaintiff's attorney, whose name and address are set forth
above. Ariz. R. Civ. P. 5 and 10(d); Ariz. Rev. Stat. §12-311.

9 Requests for reasonable accommodation for persons with disabilities must be
10 made to the division assigned to the case by the party needing accommodation or his/her
11 counsel at least three (3) judicial days in advance of a scheduled proceeding. Requests
12 for an interpreter for persons with limited English proficiency must be made to the
13 division assigned to the case by the party needing the interpreter and/or translator or
his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

14 SIGNED AND SEALED this date: _____

COPY

15
16 **CLERK OF SUPERIOR COURT** **MAR 11 2013**



MICHAEL K. JEANES, CLERK
K. WHITSON
DEPUTY CLERK

17
18 By _____

19 Deputy Clerk

Warner Angle Hallam Jackson & Formanek PLC

EXHIBIT 2



**Service of Process
Transmittal**

03/19/2013

CT Log Number 522349910

TO: Kaiper Wilson
Metropolitan Life Insurance Company
1095 Avenue of the Americas
New York, NY 10036-6796

RE: Process Served in Arizona

FOR: Metropolitan Life Insurance Company (Domestic State: NY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Peter G. Thomas, etc., Pltf. vs. Metropolitan Life Insurance Company, etc., Dft.
DOCUMENT(S) SERVED: Summons, Certificate Of Compulsory Arbitration, Complaint
COURT/AGENCY: Maricopa County - Superior Court, AZ
Case # CV2013002514
NATURE OF ACTION: Insurance Litigation - Policy benefits claimed claim for the long term disability
benefits under the policym No. 5542693-G
ON WHOM PROCESS WAS SERVED: C T Corporation System, Phoenix, AZ
DATE AND HOUR OF SERVICE: By Certified Mail on 03/19/2013 postmarked: "Illegible"
JURISDICTION SERVED : Arizona
APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive of the day of service
ATTORNEY(S) / SENDER(S): Chris R. Baniszewski
Warner Angle Hallam Jackson & Formanek PLC
3550 North Central Ave.
Suite 1500
Phoenix, AZ 85012
602 264 7101
ACTION ITEMS: CT has retained the current log, Retain Date: 03/21/2013, Expected Purge Date:
03/26/2013
Image SOP
Email Notification, CTServiceof Process ctserviceofprocess@metlife.com
SIGNED: C T Corporation System
PER: Issis Gonzalez
ADDRESS: 2390 E. Camelback Road
Phoenix, AZ 85016
TELEPHONE: 602-602-381-9104

EXHIBIT 3

COPY

MAR 14 2013



MICHAEL K. JEANES, CLERK
K. WHITSON
DEPUTY CLERK

Chris R. Baniszewski, State Bar No. 015617
**WARNER ANGLE HALLAM
JACKSON & FORMANEK PLC**
2555 East Camelback Rd., Suite 800
Phoenix, Arizona 85016
Telephone: (602) 264-7101
E-mail: cbaniszewski@WarnerAngle.com

Attorneys for Plaintiff Peter G. Thomas

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

PETER G. THOMAS, a single man,
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a New York corporation,
Defendant.

No.

CV2013-002514

**CERTIFICATE ON COMPULSORY
ARBITRATION**

Plaintiff Peter G. Thomas, through undersigned counsel, certifies that he knows the dollar limits and any other limitations set forth by the local rules of practice for Maricopa County Superior Court, and further certifies that this case is **not** subject to compulsory arbitration as provided by Local Rule 3.10(a), A.R.S. § 12-133, and Ariz. R. Civ. P. 72 through 76.

DATED this 14th day of March, 2013.

WARNER ANGLE HALLAM
JACKSON & FORMANEK PLC

By

Chris R. Baniszewski
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attorney for Plaintiff Peter G. Thomas

274299.1